

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07
L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15
USIA-06 IO-13 ACDA-07 OES-07 DLOS-09 TRSE-00 /094 W
-----112969 281656Z /47

R 281455Z JUN 77
FM USMISSION USBERLIN
TO SECSTATE WASHDC 4824
INFO AMEMBASSY BERLIN UNN
AMEMBASSY BONN
AEMBASSY BRUSSELS 1812
AMEMBASSY LONDON
AMEMBASSY PARIS
AMEMBASSY MOSCOW
USMISSION NATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1715

E.O.11652: GDS
TAGS: PGOV, EEC, FR, GE, GW, UR, US, UK, WB
SUBJECT: EC/SOVIET FISHERIES NEGOTIATIONS: BERLIN AND THE
TERRITORIAL CLAUSE

REF: (A) BONN 10485, (B) BRUSSELS 5673, (C) BONN 8550

1. SUMMARY: REFTEL A SHOW THE VIRTUE OF OUR HAVING
ESCHEWED UP TO NOW MAJOR INVOLVEMENT IN THE INTRA-
EC COLLOQUY ON THE TERRITORIAL CLAUSE. OUR COMMENTS
BELOW CONVEY OUR ANALYSIS THAT OUR ALLIES WITH ASSISTANCE
FROM THE SOVIETS, APPEAR TO BE TRAPPED IN AN ELLIPTICAL
ORBIT ON THE QUESTION. WE BELIEVE THESE EVENTS DEMONSTRATE
THAT WHILE THE US CAN AND SHOULD DEFER TO THE THREE
OTHER BONN GROUP REPS IN INITIATING APPROACHES TO EC-
BERLIN ISSUES, THE US MUST PLAY, AT SOME POINT, AN
ACTIVE ROLE IN DEVELOPING SUCH APPROACHES. IN OUR
OPINION, THAT POINT SHOULD ALWAYS OCCUR BEFORE THE
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EC, AND/OR THE THREE OTHER BONN GROUP MEMBERS HAVE
REACHED INTERNAL AGREEMENT. END SUMMARY.

2. WE NOTE WITH INTEREST THE TWO PROPOSED TEXTS (THE
ORIGINALLY PROPOSED AND THE FRENCH TEXT) OF ARTICLE 10,
THE TERRITORIAL CLAUSE, REPORTED REFTEL A. EITHER,
IN OUR VIEW, WOULD BE SATISFACTORY. WE ASSUME THAT

THE FRENCH CONSIDER THEIR TEXT WOULD BE MORE ACCEPTABLE TO THE SOVIETS THAN THE ORIGINAL. WE SUSPECT THIS WOULD NOT BE THE CASE. IN THE ORIGINAL PROPOSAL, APPLICAIION OF THE AGREEMENT TO BERLIN IS IMPLIED BY THE WORDS "THE PRESENT AGREEMENT SHALL APPLY TO THE TERRITORIES WITHIN WHICH THE TREATY ESTABLISHING THE EEC IS APPLIED". THE FRENCH PROPOSAL CONTAINS AN ADDITIONAL ELEMENT. IT STATES THAT THE EC HAS "COMPETENCE" IN THIS AREA OF APPLICATION; I.E. "COMPETENCE", BY IMPLICATION, IN BERLIN. THE SOVIETS CANNOT CHANGE THE REALITY THAT THE TREATY OF ROME IS APPLIED IN BERLIN; BUT THEY CAN QUESTION AND REFUSE TO ACKNOWLEDGE THE EC'S "COMPETENCE" IN BERLIN. THIS IS MERELY TO SAY THAT WHILE WE DONT KNOW YET WHETHER THE SOVIETS WILL ACCEPT ANY TERRITORIAL CLAUSE, THE FRENCH TEXT SEEMS FURTHER REMOVED THAN THE ORIGINAL PROPOSAL FROM THE SOVIET LEGAL POSITION ON BERLIN.

3. WE ARE ALSO INTRIGUED BY THE SOVIET OBJECTION, REPORTED PARAS 3 AND 4 REFTEL A, TO THE CLAUSE IN THE ORIGINAL PROPOSAL "AND UNDER THE CONDITIONS LAID DOWN IN THAT TREATY". THE STATED GROUNDS OF THEIR OBJECTION IS THAT THE TREATY OF ROME REFERS TO "LAND BERLIN". WE NOTE THAT, IN ACTUALITY, "LAND BERLIN" DOES NOT APPEAR IN THE TREATY OF ROME, BUT IN THE FRG INSTURMENT OF RATIFICATION. EVEN THOUGH WE DO NOT

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KNOW THE PRECISE EC PURPOSE BEHIND THIS CLAUSE, WE FIND THE SOVIET COMMENT PECULIAR. EVEN IF "LAND BERLIN" RATHER THAN THE SOVIET PREFERRED "BERLIN (WEST)" FIGURED IN THE TEXT OF THE TREATY OF ROME, THE ISSUE WOULD BE ONE OF TERMINOLOGY RATHER THAN CONDITIONS. THE CLAUSE TO WHICH THE SOVIETS OBJECTED DOES NOT REFER TO THE "TERMS" OF THE TREATY OF ROME. WE SUSPECT, THEREFORE, THAT THIS IS ANOTHER FORM OF SOVIET OBJECTION TO APPLICATION OF THE TREATY TO BERLIN, AND NOT AN OBJECTION TO THE MANNER IN WHICH BERLIN IS NAMED. UNDOUBTEDLY THE CLAUSE SERVES AN EC PURPOSE; HOWEVER, IT DOES NOT APPEAR TO BE NECESSARY FOR OUR BERLIN PURPOSES. OUR CONCERN IS THAT IT NOT BE DELETED FOR INAPPLICABLE REASONS THEREBY GIVING RISE TO A NEGOTIATING HISTORY WHICH WOULD GIVE FUEL TO FUTURE SOVIET OBJECTIONS OR POSITIONS ADVERSE TO OURS.

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4. THE BRITISH SUGGESTION FOR ADDITION OF THE PHRASE
"AND OTHER APPLICABLE AGREEMENTS" AFTER THE SECOND USE
OF "TREATY" IN THE ORIGINAL PROPOSAL STRIKES US AS
UNWISE. THE BRITISH WOULD INTEND THIS AS AN OBLIQUE
REFERENCE TO THE QUADRIPARTITE AGREEMENT (QA) OF
1971. THE REFERENCE WOULD BE OBLIQUE INDEED SINCE THE
EC IS NOT A PARTY TO THE QA, AND IS NOT EXPRESSLY
MENTIONED IN IT. THE SOVIETS COULD READILY ARGUE,
IF THE EC NEGOTIATORS WERE TO STATE THAT THE QA IS
COVERED BY THIS CLAUSE, THAT THE EC AS A NON-PARTY
TO THE QA HAS NO BUSINESS CITING IT IN A BILATERAL
AGREEMENT WITH A QA SIGNATORY. WE UNDOUBTEDLY WOULD TAKE A
COMPARABLE POSITION; IN PRINCIPLE, WERE
WE TO BE CONFRONTED BY A NON-PARTY STATE WHO WISHED
TO CITE "CONDITIONS LAID DOWN IN THE ... QA" IN A
BILATERAL TREATY WITH US. THE CITATION, ITSELF,
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IMPLIES THE COMPETENCE TO OFFER INTERPRETATIONS OF
THE AGREEMENT. OUR POSITION IS FIRM THAT ONLY THE
FOUR POWERS CAN DO SO. WE ALSO BELIEVE A REFERENCE TO
THE QA IS UNWISE BECAUSE IT DOES NOT ADD ANYTHING

IN DESCRIBING THE EC RELATIONSHIP WITH BERLIN; AND, IN CONTRAST, IT FALLS INTO THE SOVIET TRAP OF REFERRING TO THE QA AS IF THE QA WERE THE DOCUMENT FROM WHICH FOUR POWER RIGHTS AND RESPONSIBILITES AND THE STATUS OF BERLIN EMANANTE. IN SHORT, THE TREATY OF ROME WAS EXTENDED TO BERLIN BY ACTION OF THE ALLIED KOMMANDATURA, NOT BY THE QA. THE QA DOES NOT "LAY DOWN" CONDITIONS FOR THE APPLICATION OF EC TREATIES IN BERLIN. FROM OUR PERSPECTIVE, THE QA CAN BE READ AS CONFIRMING THE LEGALITY OF THE EC-BERLIN RELATIONSHIP; BUT, OF COURSE, THE SOVIETS WOULD ARGUE THAT THE QA IS NOT APPLICABLE TO POST-1971 EC DEVELOPMENTS.

5. USBER REALIZES THAT AT THIS STAGE WE ARE LETTING THE OTHER THREE BONN GROUP REPS FIGHT IT OUT, AND DO NOT PLAN TO INTERVENE UNLESS A STALEMATE DEVELOPS. EVEN ABSENT A STALEMATE, HOWEVER, USBER BELIEVES WE SHOULD NOT BE COMPLETELY PASSIVE. WE BELIEVE THAT WHERE BERLIN IS CONCERNED, THE US HAS ARIGHT AND A RESPONSIBILITY TO INVOLVE ITSELF IN EC MATTERS. WITH THAT IN MIND, THIS MESSAGE OFFERS SOME THOUGHTS WHICH OUR BONN GROUP REP MAY FIND USEFUL. GEORGE

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Message Attributes

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Control Number: n/a
Copy: SINGLE
Sent Date: 28-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
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